

REMARKS

The present Amendment is in response to the Office Action mailed March 22, 2006, in the above-identified application. Enclosed herewith is a Petition requesting a one-month extension of time for resetting the deadline for responding to the Office Action from June 22, 2006, to and including July 22, 2006.

In the Office Action, the Examiner objected to the drawings under 37 CFR 1.83(a). Specifically, the Examiner asserts that the limitation "annular groove in the retaining wall" must be shown in the drawing figures or canceled from the claims. As noted above, the "annular groove in the retaining wall" limitation has been deleted from claim 1. In view of the above-noted amendment, the drawings are now deemed to satisfy the requirements of 37 CFR 1.83(a).

The Examiner objected to the specification as failing to provide a proper antecedent basis for the claimed subject matter. Specifically, the Examiner noted that the limitation "annular groove in the retaining wall" is not found in the written disclosure. In view of the above-noted amendment of claim 1, Applicants respectfully assert that the specification adequately provides a proper antecedent basis for the claimed subject matter.

The Examiner rejected claims 1-2, 4, 7-8 and 10-11 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,893,889 to Harrington. Referring to FIG. 2 thereof, Harrington discloses a disc implant 18 including an upper member 32 having an upper surface 36 with pins 38 and a lower member 34 having a lower surface 40 with pins 42. The upper member 32 includes a threaded tubular portion 50 that receives a threaded annular collar 54 having a neck 57 that is sized to retain a spherical upper end 46 of a threaded post 45. The disc implant 18 also includes an annular shock absorbing member 68 that

generally conforms to the opposing frustoconical surfaces of the upper and lower members 32, 34. The device 18 also includes a tubular membrane 78 that is held in place by retaining rings 74, 76 securable in annular grooves 70, 22 of the upper and lower members 32, 34. The tubular membrane 78 is a tubular shield of flexible material that extends around the circumference of the prosthesis to prevent tissue from growing between the members 32, 34. Column 2, lines 24-26. The tubular membrane 78 does not hold the threaded annular collar 54 against the upper plate member 32.

As noted above, claim 1 has been amended. Applicants respectfully assert that claim 1 is unanticipated by Harrington because the cited reference does not disclose an intervertebral spacer device having the recitations found in claim 1 including the limitation that "wherein upon implantation of said assembled spacer device said convex element is movable relative to said first plate member within the enclosed area." Clearly, Harrington's annular collar 54 is not movable relative to the first plate 32 when it is implanted between vertebrae. As shown in FIG. 2, the convex element 54 is prevented from movement by screws 64, 66 and threaded tubular portion 50 and thus cannot move once implanted between vertebrae. For the above reasons, Applicants respectfully assert that claim 1 is unanticipated by Harrington and is otherwise allowable. Claims 2, 4, 7-8 and 10-11 are unanticipated, *inter alia*, by virtue of their dependence from claim 1, which is unanticipated for the reasons set forth above.

The Examiner also rejected claims 3, 5-6 and 9 under 35 U.S.C. §103(a) as being unpatentable over Harrington in view of U.S. Patent No. 5,989,291 to Ralph et al. In response, Applicants respectfully assert that Ralph does not overcome the deficiencies noted above in Harrington. For these reasons, Applicants respectfully assert that claims 3, 5-6 and 9 are

unobvious, *inter alia*, by virtue of their dependence from claim 1, which is patentable for the reasons set forth above.

The Examiner rejected claims 1-8, 10 and 11 on the grounds of non-statutory obviousness-type double patenting as being unpatentable over claims 1, 3 and 6-9 of U.S. Patent No. 6,918,934 in view of Harrington '889. The Examiner also rejected claims 1-8 and 10-11 on the grounds of non-statutory obviousness-type double patenting as being unpatentable over claims 1, 2 and 7 of U.S. Patent No. 6,740,117 in view of Harrington '889. In response, Applicants enclose herewith a Terminal Disclaimer to overcome the double patenting rejection.

As it is believed that all of the rejections set forth in the Office Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested Amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: July 19, 2006

Respectfully submitted,

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